

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION IV

CACR 06-613

December 20, 2006

CALVIN WATSON
APPELLANT

AN APPEAL FROM PULASKI COUNTY
CIRCUIT COURT [CR 2005-000164]

V.

HON. CHRIS PIAZZA, JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

Calvin Watson appeals from two convictions for possession of cocaine with intent to deliver and a single conviction of possession of marijuana with intent to deliver. He argues that the trial court erred in denying his directed-verdict motion because the evidence supporting the charges was contradictory. We affirm without reaching the merits of appellant's sufficiency argument because he failed to specify which elements of the charges the State failed to prove.

Appellant's arrest was the result of three separate controlled buys that were conducted on October 26-28, 2004. On October 26, Donna Lambert, a confidential informant working with the Pulaski County Sheriff's Office Narcotic Unit, telephoned appellant from the

Sheriff's office and made arrangements to meet with him. Prior to the meeting, Lambert was strip-searched by Deputy Sue Phillips, who determined that Lambert had no drugs on her person. Officer Brian Sternberg purported to search Lambert's vehicle before she left; however, Lambert described her vehicle as a cream-colored Chevrolet, while Sternberg testified that her vehicle was a silver Hyundai Sonata. According to Sternberg, the vehicle he searched contained no contraband prior to the controlled buys.

Lambert was followed to the scene by Investigator David Potter, who used the alias of "Matt." Because appellant refused to discuss money with Lambert, she was not given any "buy" money. As she drove to the prearranged location, she telephoned appellant to inform him that she was en route, and he changed the meeting location. Lambert went to the new location, met with appellant, and discussed the sale of cocaine, but told him that she did not have any money and that she would need to get it from Matt, her buyer. She then met Potter and they went in her vehicle to meet appellant at the Auto Zone on Roosevelt Road, where appellant was waiting on them in a vehicle. Appellant asked Potter if he was a police officer; Potter responded jokingly that he was, which seemed to satisfy appellant, who "pulled out the off-white rock substance." Potter paid appellant \$150 in buy money for the large baggie of cocaine. After noticing that appellant had even more cocaine, Potter bought an additional amount of cocaine, using \$100 in buy money. Potter submitted these purchases to the evidence room and to the Arkansas State Crime Laboratory. Two forensic chemists from the crime lab testified that the samples were cocaine base, weighing .8206 grams and .3865

grams, respectively.

The next day, October 27, 2004, Lambert and Potter met appellant again in his vehicle at the Auto Zone location. Lambert and Potter approached appellant's vehicle. After making contact, appellant "pulled out a large white rock and placed it on the back of his hand." Potter purchased the cocaine from appellant for \$250, which was later determined by the crime lab to weigh 1.681 grams.

Appellant then offered to supply other contraband, including marijuana. The original plan was for Potter to purchase the marijuana the same day, but he rescheduled because the meeting time conflicted with his other duties. Appellant became suspicious when Potter telephoned him to reschedule and the officer's telephone number was displayed as "restricted" on appellant's phone. Nonetheless, appellant and Potter made arrangements to meet on October 28, 2004, without Lambert.

Potter again met appellant at Auto Zone. The transaction was recorded and additional nearby officers listened to the events as they transpired. Potter testified that during this third meeting, appellant was apprehensive, argued with Potter, and told Potter to get into the vehicle, which Potter refused to do. Appellant pulled out a bag of marijuana from his left pocket and placed it on the car seat. He became agitated while Potter pulled the buy money from his sock and counted it. Potter gave appellant \$250 and took the bag of marijuana, which weighed 57.2 grams.

Appellant then sped off around the building, which took him out of visual contact with

the drug team for approximately thirty to forty seconds. Appellant was ultimately apprehended near 65th Street. A drug dog sniffed appellant's car but did not alert to the presence of contraband. Appellant did not have the buy money in his possession; he later admitted to the officer taking his voluntary statement that he threw the money out of the car window when he went behind the store.

Appellant was charged with two counts of possession of cocaine with intent to deliver and one count of possession of marijuana with intent to deliver. During the bench trial, appellant moved for a directed verdict as follows:

There's conflicting testimony as to what vehicles were searched when the CI's going out to arrange these buys and make these buys. Your honor, there's conflicting testimony, they all admit that my client's vehicle didn't smell of marijuana, or anything after he allegedly sold 57.2 grams of marijuana. And, when they ran dogs, they did not find any money on my client. So I don't believe the State has met its burden on any of these cases.

The trial court denied the motion and found appellant guilty of all charges.

We affirm appellant's convictions but do not address the merits of his sufficiency argument because he failed to preserve the argument for appellate review. Appellant was convicted pursuant to Ark. Code Ann. § 5-64-401 (2005), which makes it unlawful for any person to deliver a controlled substance. While appellant pointed to what he claims is contradictory evidence in his motion for a directed verdict, we cannot address his argument regarding the sufficiency of the evidence because he did not specify in his motion how any such evidence translated into a failure of proof of any element of the charges against him.

Arkansas Rule of Criminal Procedure 33.1(b) requires that a motion for a directed

verdict “must specify the respect in which the evidence is deficient.” Thus, where a defendant fails to specify the manner in which the evidence was deficient or failed to specify the elements of the charge that were not proven by the State, his challenge to the sufficiency of the evidence is not preserved for appellate review. *See McCoy v. State*, 326 Ark. 104, 929 S.W.2d 712 (1996). Because appellant here failed to specify how the evidence was deficient or which elements of the charges the State failed to prove, we affirm his convictions without reaching the merits of his sufficiency argument.

Affirmed.

HART and BIRD, JJ., agree.